

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2009-163-C - ORDER NO. 2009-747  
OCTOBER 21, 2009

IN RE:	Application of ATN, Inc. for a Certificate of	)	ORDER GRANTING
	Public Convenience and Necessity to Provide	)	CERTIFICATE AND
	Intrastate Telecommunications Services with	)	APPROVING MODIFIED
	Alternative Regulation, and Local Exchange	)	ALTERNATIVE
	Telecommunications Services with Flexible	)	REGULATION
	Regulation within the State of South Carolina	)	

This matter comes before the Public Service Commission of South Carolina ("Commission") by way of the Application of ATN, Inc. ("ATN" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold intrastate telecommunications services to inmates of correctional and confinement facilities within the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2008) and the rules and regulations of the Commission. By its Application, ATN also requests modified alternative regulation of its interexchange services consistent with Commission Orders, and waiver of certain Commission regulations.

The Commission's Docketing Department instructed ATN to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of ATN and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. ATN complied with this instruction and

provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or Protests were filed.

A hearing was convened on July 13, 2009, at 11:30 a.m. in the offices of the Commission in Columbia, South Carolina, before David Butler, Hearing Examiner. ATN was represented by Scott Elliott, Esquire. The Office of Regulatory Staff ("ORS") was represented by C. Lessie Hammonds, Esquire.

Gordon R. Reilly, Chief Executive Officer for the Company, testified in support of the Company's Application. The record reveals that ATN is a corporation organized under the laws of the State of Georgia and that is registered to transact business in South Carolina as a foreign corporation. According to Mr. Reilly, the Company seeks authority to provide automated collect (postpaid and prepaid) intrastate telecommunications services and debit services to inmates of prisons, jails, and other confinement institutions. Mr. Reilly explained the Company's request for authority, and the record further reveals the Company's services, operations, and marketing procedures. The Company installs sophisticated premises equipment within the facility which permits inmates to make outgoing, collect-only calls without the assistance of a live operator. For collect calling services, ATN's call processing system provides automated voice prompts to the calling and the called party for instructions on how to place and accept the call. The called party must accept the call with an affirmative response or the call is terminated automatically. Customers are charged individually for each call. The Company's system collects and stores collect call detail information for each call. The records are retrieved by ATN and submitted for billing to the called party's local exchange carrier through ATN's billing

agent. ATN will switch calls through their underlying carrier. Calls are routed over switched access facilities to the nearest underlying carrier's point of presence, and the underlying carrier transports the calls to its switch and terminates calls over its own terminating network. ATN's underlying carrier is AT&T. The Applicant was granted a certificate of public convenience and necessity to provide customer owned, coin or coinless operated telephones by Order 1993-188 in Docket No. 1985-150-C. By Order 1999-273 dated April 14, 1999, the Commission granted Applicant's name change to ATN, Inc. by which it has operated since.

Mr. Reilly also discussed ATN's technical, financial, and managerial resources to provide the services for which it seeks authority. Reilly offered that ATN possesses sufficient financial resources to support its operations in South Carolina.

With regard to management and technical capabilities, the Company's Application and Testimony of Gordon R. Reilly both evidence that ATN's management has extensive experience in telecommunications, information technology, regulatory matters, and accounting and finance. Mr. Reilly also testified that ATN will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders. Mr. Reilly offered that approval of ATN's Application would serve the public interest.

On behalf of the Company, Mr. Reilly requested waivers of Commission rules and regulations that would permit ATN to maintain its books and records according to Generally Accepted Accounting Principles ("GAAP"), rather than Uniform Systems of Accounts ("USOA"), maintain its books and records in its headquarters in the State of

Georgia, refrain from publishing and distributing a local telephone directory and refrain from maintaining a map of its service territory on file.

After consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

### **FINDINGS OF FACT**

1. ATN is organized under the laws of the State of Georgia as a corporation and is authorized to do business as a foreign corporation in South Carolina by the Secretary of State.
2. ATN desires to operate as a provider of resold intrastate telecommunications services to inmates of correctional facilities located in South Carolina.
3. ATN possesses the managerial experience and capability to operate as a provider, through resale, of intrastate telecommunications services in South Carolina.
4. Based on the financial statements submitted by the Company and the testimony at the hearing, ATN possesses sufficient financial resources to provide the services as described in its Application and testimony.
5. The issuance of a Certificate of Public Convenience and Necessity to ATN to operate as a reseller of intrastate telecommunications services in South Carolina would be in the best interests of the citizens of South Carolina by providing more innovative services.
6. The waivers as requested by ATN that it (1) be allowed to maintain its books and records according to GAAP rather than USOA, (2) not be required to publish and

distribute a local telephone directory, (3) be allowed to maintain its books and records at its headquarters in the State of Georgia, and (4) not be required to file a map of its service territory are reasonable. Compliance with these requirements by the Commission would present unusual difficulty for ATN. Further, the waiver of these requirements will not create any hardship or affect the public or adversely affect the public interest.

7. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B) (1) (Supp. 2008).

8. The services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B) (2) (Supp. 2008).

9. The issuance of a Certificate of Public Convenience and Necessity to ATN would be in the best interests of the citizens of South Carolina by increasing the level of competition in the institutional calling services market, by providing an alternative source of providers for inmate services, and by creating incentives for lower prices, and more innovative services.

#### **CONCLUSIONS OF LAW**

1. The Commission concludes that ATN possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that ATN will participate in the support of universally available telephone service at affordable rates to the extent that ATN may be required to do so by the Commission.

3. The Commission concludes that ATN will provide services which will meet the service standards of the Commission.
4. The Commission concludes that approval of ATN's Application to provide intrastate telecommunications services within South Carolina will serve the public interest by offering an alternative source of inmate telecommunications service providers and by providing for efficient use of existing telecommunications resources.
5. The Commission concludes that the provision of intrastate telecommunications service by ATN will not adversely impact the public interest.
6. The Commission concludes that the issuance of the authority to provide intrastate telecommunications services as requested by ATN and as set forth in its Application and Gordon R. Reilly's testimony is in the best interests of the citizens of the State of South Carolina.
7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to ATN to provide resold intrastate telecommunications services to inmates of correctional facilities in South Carolina.
8. The Commission concludes that ATN's intrastate telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of interexchange service offerings.
9. With regard to the residential interexchange service offerings of the Company, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum

rate levels. In Re: Application of GTE Sprint Communications Corporation, et al. Order No. 84- 622, issued in Docket No. 1984-10-C (August 2, 1984).

10. With regard to residential interexchange service rates, the Company shall not adjust its residential interexchange service rates below the approved maximum levels without notice to the Commission and to the public. The Company shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction, In Re: Application of GTE Sprint Communications etc. Order No. 93-638, issued in Docket No. 1984-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540.

11. The Commission has granted "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-

661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission.

12. With regard to the provision of inmate calling service for local and intraLATA interexchange calling, ATN shall not charge rates any greater than the rates and charges by the local exchange company at the time a call is placed. For interLATA interexchange calling, ATN shall charge rates not greater than AT&T's charges and operator station usage rates at the time the call is placed. Additionally, automated collect calls shall only be completed with the affirmative acceptance by the called party. Also, the Company shall not impose any subscriber surcharges on calls originating from inmate facilities. For inmate calling service, call detail information submitted to the local exchange company for billing purposes must include the access line telephone number as assigned to the line by the local exchange company.



13. By its Application, the Company requested a waiver of 26 S.C. Code Ann. Regs. 103-631 requiring publication of telephone directories. The Commission finds the Company's requests reasonable and grants the requested waiver of the application of 26 S.C. Code Ann. Regs. 103-631. Further, the Company is granted a waiver of 26 S.C. Code Ann. Regs. 103-610 requiring the Company to maintain its financial books and records within the State of South Carolina. However, as a condition of being granted a waiver of the requirement to maintain corporate books and records within the State of South Carolina, ATN is authorized to maintain its books and records at its principal place of business, and ATN shall make such books and records available, at the Company's expense, to the Commission staff or employees upon request. Further, the Company is granted a waiver of the requirement that books and records be maintained in accordance with the Uniform Systems of Accounts ("USOA"). Last, the Commission grants the Applicant's request for the waiver of the requirement that it file a map of its service territory as required by 26 S.C. Code Ann. Regs. 103-612.2.3. The Company is directed to comply with all Rules and Regulations of the Commission, unless the Commission specifically waives compliance with a regulation.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

1. A Certificate of Public Convenience and Necessity should be granted to ATN to provide intrastate telecommunications services through the resale of services authorized for resale by tariffs of carriers approved by the Commission within the State of South Carolina.

2. The Company's rate designs for its products shall conform to those designs described in Conclusions of Law above.
3. If it has not already done so by the date of issuance of this Order, ATN shall file its revised tariff within thirty (30) days of receipt of this Order utilizing the Commission's e-filing system for tariffs. The revised tariff should be electronically filed in a text searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to [etariff@psc.sc.gov](mailto:etariff@psc.sc.gov) to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariff should be made using the ETariff System. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.
4. The Company's service is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.
5. ATN shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If ATN changes underlying carriers, it shall notify the Commission in writing.
6. With regard to the origination and termination of toll calls within the same LATA, ATN shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the

Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, ATN shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

7. ATN shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of state specific information. Therefore, ATN shall keep financial records on state - specific basis for its South Carolina operations to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at [www.psc.sc.gov/forms.asp](http://www.psc.sc.gov/forms.asp) or at the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1st**.

The gross receipts form which requires the filing of intrastate gross receipts is to be filed no later than **August 31<sup>st</sup>** of each year. The proper form for filing gross receipts information can be found at the ORS website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov) and the appropriate form is entitled "Gross Receipts Form."

Each telecommunications company certified in South Carolina is required to file annually with the ORS the South Carolina Universal Service Fund ("USF") Contribution Worksheet (SC USF Contribution Worksheet), which requires the reporting of intrastate and interstate revenues for the company's South Carolina operations. The SC USF Worksheet form may be found on the ORS's website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). This

Worksheet provides ORS information required to determine each telecommunications company's liability to the State USF fund. The SC USF Contribution Worksheet is due to be filed annually no later than **July 1st** with the ORS.

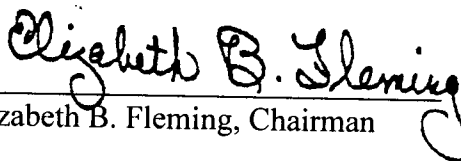
8. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. ATN shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at [www.psc.sc.gov/forms.asp](http://www.psc.sc.gov/forms.asp); this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing, when there is a change in its authorized representatives. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

9. By its Application, the Company requested a waiver of 26 S.C. Code Ann. Regs. 103-631 requiring publication of telephone directories. The Commission finds the Company's requests reasonable and grants the requested waiver of the application of 26 S.C. Code Ann. Regs. 103-631. Further, the Company is granted a waiver of 26 S.C. Code Ann. Regs. 103-610 requiring the Company to maintain its financial books and

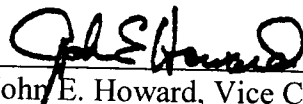
records within the State of South Carolina. However, as a condition of being granted a waiver of the requirement to maintain corporate books and records within the State of South Carolina, ATN is authorized to maintain its books and records at its principal place of business, and ATN shall make such books and records available, at the Company's expense, to the Commission staff or employees upon request. Further, the Company is granted a waiver of the requirement that books and records be maintained in accordance with the Uniform Systems of Accounts ("USOA"). Last, the Commission grants the Applicant's request for the waiver of the requirement that it file a map of its service territory as required by 26 S.C. Code Ann. Regs. 103-612.2.3. The Company is directed to comply with all Rules and Regulations of the Commission, unless the Commission specifically waives compliance with a regulation.

10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Elizabeth B. Fleming, Chairman

ATTEST:

  
John E. Howard, Vice Chairman  
(SEAL)